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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PHILIP LEE CHILDS, MICHAEL TERRELL VANOVER, HUI WANG, and SHAOWEI CHEN

Appeal 2017-000886
Application 13/690,169
Technology Center 2400

Before JAMES R. HUGHES, ERIC S. FRAHM, and LINZY T. McCARTNEY, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 3,7, 10–13, 16, and 19–21, which constitute all the claims pending in this application. Claims 2, 4–6, 8, 9, 14, 15, 17, and 18 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Exemplary Claim

Claims 1, 13, and 20 are independent and pertain to a method (*see e.g.*, claim 1), information handling device (*see e.g.*, claim 13), and a program product including computer program code to perform a method including authorizing a destination user device to access media files resident on a source user device and playing back the media files at a destination user device using a cloud account device (*see e.g.*, claim 20) (Spec. ¶¶ 1, 2; Fig. 3; Abs.; Title). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below with *emphases* added:

> 1. A method, comprising:
> receiving, *at a cloud account device*, login data from a controller user device;
> providing, from the cloud account device, a listing of available source user devices based on the login data received from the controller user device;
> receiving, at the cloud account device, an authorization for the controller user device from a destination user device associated with a cloud account of another user;
> providing, from the cloud account device, a listing of available destination user devices to the controller user device based on the login data received from the controller user device;
> *receiving, at the cloud account device, selection*

> *information from the controller user device, the selection information comprising identification of a source user device, one or more media files, and one or more destination user devices*;
>
> authorizing, at the cloud account device, access to one or more media files resident on the source user device based on the login data; and
>
> *issuing an instruction to the source user device instructing the source user device to transfer one or more media files to one or more destination user devices for access by the one or more destination user devices.*

Remaining independent claims 13 and 20 recite similar limitations as recited in the method of claim 1, and correspond to an information handling device and program product to perform the method of claim 1.

The Examiner's Rejection

The Examiner rejected claims 1, 3, 7, 10–13, 16, and 19–21 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ellis (US 2007/0157281 A1; published Jul. 5, 2007), Conness (US 2009/0133069 A1; published May 21, 2009), Arrouye (US 2013/0311598 A1; published Nov. 21, 2013 and filed May 16, 2012), and Bryant (US 8,418,206 B2; issued Apr. 9, 2013 and filed Mar. 22, 2007). Final Act. 7–16.

Principal Issue on Appeal

Based on Appellants' arguments in the briefs (App. Br. 14–18; Reply Br. 17–22) in response to the Examiner's rejection (Final Act. 7–16), the following principal issue is presented on appeal:[1]

Did the Examiner err in rejecting claims 1, 3, 7, 10–13, 16, and 19–21 over the combination of Ellis, Conness, Arrouye, and Bryant because the combination fails to teach or suggest the disputed limitations of a method of authorizing a destination user device to access media files resident on a source user device and play back the media files at a destination user device using a cloud account device, as recited in representative independent claim 1?

ANALYSIS

We have reviewed the Examiner's rejections (Final Act. 7–16) in light of Appellants' contentions in the Appeal Brief (App. Br. 14–18) and the Reply Brief (Reply Br. 7–22) that the Examiner has erred, as well as the Examiner's response to Appellants' arguments in the Appeal Brief (Ans. 12–17).

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[1] Appellants argue independent claims 1, 13, and 20 as a group, and argue only the merits of claim 1 (App. Br. 14–19; Reply Br. 17–21), relying on these arguments for the patentability of the remaining claims. Independent claims 1, 13, and 20 each recite similar limitations pertaining to a method of authorizing a destination user device to access media files resident on a source user device and play back the media files at a destination user device using a cloud account device. Accordingly, we select claim 1 as representative of the group of claims 1, 3, 7, 10–13, 16, and 19–21 rejected over Ellis, Conness, Arrouye, and Bryant.

We disagree with Appellants' arguments as to independent claims 1, 13, and 20. With regard to representative independent claim 1, we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 7–12), and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to the Appellants' Appeal Brief (Ans. 2–7). We provide the following for emphasis.

We note that each reference cited by the Examiner must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (finding one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references). In this light, Appellants' arguments presented as to each individual reference (*see* App. Br. 14–17; Reply Br. 17–21) are not persuasive inasmuch as the Examiner relies on a properly made *combination* of Ellis, Conness, Arrouye, and Bryant to support the conclusion of obviousness of the subject matter of representative independent claim 1. Appellants have not rebutted or otherwise shown the Examiner's explanation of the *combination* of the collective teachings and suggestions of the applied references (*see* Ans. 12–17) made in response to the Appellants' arguments in the Appeal Brief (regarding the references individually) to be in error. Appellants' Reply Brief does not convince us otherwise.

With regard to Appellants' primary argument (App. Br. 15–16; Reply Br. 19), that Ellis is drawn to a *home* network and not a *cloud* network, we agree with the Examiner (Ans. 12–14) that Appellants are arguing a different embodiment than the one relied upon by the Examiner. We also agree with

the Examiner that (i) Ellis teaches an accounting device (Final Act. 8; Ans. 3), and (ii) Arrouye teaches or suggests a cloud accounting device (Final Act. 11; Ans. 6).

Furthermore, Appellants' Reply Brief does not respond to the Examiner's finding (*see* Ans. 17) that a cloud account device or cloud networking server for receiving authorization from a user device to send content to another (i.e., destination) device was well-known in the art at the time of Appellants' invention, as supported by several prior-art references.[2] Therefore, Appellants have not timely responded to the Examiner's Official Notice that a cloud account device was known for sharing content. In any event, we agree with the Examiner (Final Act. 11; Ans. 6 and 13) that Arrouye teaches or suggests the recited cloud account device. Notably, Appellants admit that "Arrouye is directed to a system of cloud-based data item sharing" (App. Br. 17; Reply Br. 21).

To the extent Appellants present new arguments for the first time in their Reply Brief — that Ellis "does not suggest a three device arrangement, as claimed" (Reply Br. 18–19), Appellants do not provide a compelling explanation for why this argument was not previously presented. Therefore, this argument is waived. *See Ex parte Borden*, 93 USPQ2d 1473, 1473–74 (BPAI 2010) (informative opinion) (absent a showing of good cause, the

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[2] Appellants' contention (Reply Br. 17) that the Examiner's Answer simply restates the rejection and "maintain[s] the same basic thrust" as made in the Final Office Action are incorrect. The Examiner has clearly set forth new findings pertaining to Official Notice that a cloud account device or cloud networking server for receiving authorization from a user device to send content to another (i.e., destination) device was well-known in the art at the time of Appellants' invention (*see* Ans. 17).

Board is not required to address an argument newly presented in the reply brief that could have been presented in the principal brief on appeal); 37 C.F.R. §41.41(b)(2) (same). Even so, we find that the combination of references teaches or suggests such a three device arrangement.

In view of the foregoing, we sustain the Examiner's obviousness rejection of representative independent claim 1, as well as the remaining claims on appeal grouped therewith.

CONCLUSION

The Examiner did not err in rejecting claims 1, 3, 7, 10–13, 16, and 19–21 over the combination of Ellis, Conness, Arrouye, and Bryant because the base combination fails to teach or suggest the disputed limitations of a method of authorizing a destination user device to access media files resident on a source user device and play back the media files at a destination user device using a cloud account device, as recited in representative independent claim 1.

DECISION

The Examiner's rejection of claims 1, 3, 7, 10–13, 16, and 19–21 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED